



January 27, 2006

## SENATE BILL No. 192

DIGEST OF SB 192 (Updated January 25, 2006 8:29 pm - DI 106)

**Citations Affected:** IC 35-33.

**Synopsis:** Bail requirements. Allows a court that admits a defendant to bail to require the defendant to post a combination of property and surety bonds as a condition of bail. Provides that if a court requires a defendant to deposit cash or cash and other security in an amount equal to the defendant's bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay: (1) publicly paid costs of representation; and (2) fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

**Effective:** July 1, 2006.

**Bray**

January 9, 2006, read first time and referred to Committee on Judiciary.  
January 26, 2006, amended, reported favorably — Do Pass.

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SB 192—LS 6574/DI 69+



January 27, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 192

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.10-2005,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2006]: Sec. 3.2. (a) A court may admit a defendant to bail and  
4 impose any of the following conditions to assure the defendant's  
5 appearance at any stage of the legal proceedings, or, upon a showing  
6 of clear and convincing evidence that the defendant poses a risk of  
7 physical danger to another person or the community, to assure the  
8 public's physical safety:

9 (1) Require the defendant to:

10 (A) execute a bail bond with sufficient solvent sureties;

11 (B) deposit cash or securities in an amount equal to the bail;

12 (C) execute a bond secured by real estate in the county, where  
13 thirty-three hundredths (0.33) of the true tax value less  
14 encumbrances is at least equal to the amount of the bail; ~~or~~

15 (D) post a real estate bond; **or**

16 (E) **perform any combination of the requirements**  
17 **described in clauses (A) through (D).**

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**If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.** The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

**(A)** a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; ~~if the defendant is convicted, and~~

**(B) an agreement that allows the court may to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution if ordered by that the court may order the defendant to pay if the defendant is convicted.**

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision ~~the following:~~

~~(A)~~ fines, costs, fees, and restitution as ordered by the court, ~~(B)~~ publicly paid costs of representation that shall be disposed of in accordance with subsection (b),

~~(C)~~ **and the fee required by subsection (d).** In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

~~(D)~~ **The fee required by subsection (d).**

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a

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probation officer or other appropriate public official.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in the the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

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- 1 (f) When a court imposes a condition of bail described in subsection  
2 (a)(4):  
3 (1) the clerk of the court shall comply with IC 5-2-9; and  
4 (2) the prosecuting attorney shall file a confidential form  
5 prescribed or approved by the division of state court  
6 administration with the clerk.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 192, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 1, after "cash" insert "**or cash and another form of security**".

Page 2, line 1 delete "in an".

Page 2, line 2, delete "amount equal to the" and insert "**as**".

Page 2, line 2, delete "under clause (B)".

Page 2, line 2, delete "shall" and insert "**may**".

and when so amended that said bill do pass.

(Reference is to SB 192 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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